

**United States Department of Labor
Employees' Compensation Appeals Board**

M.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Boston, MA Employer**

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**Docket No. 09-729
Issued: October 8, 2009**

Appearances:

Jeffrey P. Zeelander, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 22, 2009 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated May 13, 2008 denying her left thumb condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she developed left thumb basal joint arthritis due to her federal employment.

FACTUAL HISTORY

On February 7, 2008 appellant, then a 45-year-old mail processing clerk, filed an occupational disease claim alleging that she developed basal joint arthritis in her left hand thumb and wrist due to throwing, lifting, loading and sorting mail as well as machine work.

Appellant submitted a narrative statement asserting that she used her left hand in throwing mail on a nightly basis as well as grabbing, pinching, lifting and loading mail. She returned to work in January 2007 and was required to sort mail by hand. Appellant stated that

her limitations required her to use her left hand only. She contended that her present condition was a consequential injury but that no lost wages were claimed. Appellant requested medical care as she had received disability retirement benefits. On January 28, 2008 her disability retirement was approved. The Office of Personnel Management (OPM) found appellant disabled for her position as a mail processor due to bilateral basal joint arthritis of the hand, thumb and wrist. In a note dated January 9, 2008, Dr. Bruce M. Leslie, a Board-certified orthopedic surgeon, noted that appellant had developed pain in the left thumb which she attributed to overuse. He stated, "I suspect that [appellant] probably has arthritis in the left basal joint."

In a letter dated April 1, 2008, the Office requested additional medical evidence from appellant noting that Dr. Leslie did not provide a firm diagnosis of her condition or explain how her employment caused her condition. Appellant submitted a factual statement dated April 28, 2008 and noted that she had informed Dr. Leslie that she was experiencing pain in her left hand.

By decision dated May 13, 2008, the Office denied appellant's claim. It found that appellant performed the described work duties but that the medical evidence was not sufficient to establish that her condition was employment related.

On appeal, appellant's attorney contends that she submitted sufficient medical evidence to meet her burden of proof or to require additional development by the Office.

LEGAL PRECEDENT

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.¹ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of a disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²

ANALYSIS

Appellant alleged that she developed left thumb basal joint arthritis due to her employment activities. The Office found that she performed lifting, throwing and sorting mail as alleged. However, appellant failed to submit sufficient medical evidence to establish causal relation.

The medical evidence consists solely of the January 9, 2008 treatment record of Dr. Leslie, a Board-certified orthopedic surgeon, who noted that appellant had developed pain in the left thumb which she attributed to overuse. He stated, "I suspect that [appellant] probably

¹ 20 C.F.R. § 10.5(q).

² *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

has arthritis in the left basal joint.” This report is not sufficient to meet appellant’s burden of proof as Dr. Leslie failed to provide a firm diagnosis. Dr. Leslie’s opinion on whether appellant has left thumb basal joint arthritis was concluded in speculative terms. He merely indicated that he suspected this condition. Without a clear diagnosis, findings on physical examination and an opinion addressing how appellant’s condition was caused or contributed to by her employment activities, this report is insufficient to meet her burden of proof. The Board further notes that the report is of diminished probative value. Before the Office is required to undertake additional development of the medical evidence, a medical report must contain an accurate medical history and factual background, a firm medical diagnosis and opinion that the employee’s condition is related to the employment.³ The Board finds that the Office properly denied appellant’s claim.

CONCLUSION

Appellant failed to submit the necessary medical opinion evidence to establish that she developed left thumb basal joint arthritis due to her employment.

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2008 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: October 8, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees’ Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees’ Compensation Appeals Board

³ See *John J. Carlone*, 41 ECAB 354, 358-60 (1989).